

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 158 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PATEL PRAGJIBHAI POPATBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 158 of 1992
MR KJ SHETHNA for Petitioners No. 1-3
MR KC SHAH, APP for Respondent No. 1
-

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 15/02/2002

CAV JUDGEMENT

1. The appellants - original accused nos. 1 to 3 of
Sessions Case No. 30 of 1989 have filed this appeal u/S.
374 (2) of the Code of Criminal Procedure (for short

'Cr.P.C.'). They have sought to challenge the judgment and order of conviction and sentence passed by the Ld. Addl. Sessions Judge, Amreli dated 15/2/1992 in aforesaid Sessions Case. The appellants vide said judgment and order have been convicted for offence made punishable u/S. 306 of the Indian Penal Code (for short 'IPC') and they have been sentenced to suffer rigorous imprisonment for four years and to pay fine of Rs.1,000/each, in default further RI for six months. They have also been convicted for offence made punishable u/S. 498-A of the IPC and they have been sentenced to suffer RI for six months and to pay fine of Rs.500/- each, in default further RI for three months. The substantive sentences are directed to run concurrently. Original accused no. 4 - Devashibhai Popatbhai came to be acquitted by the Ld. trial Judge of all the offences with which he was charged.

2. The prosecution case is that appellants nos. 1 and 2 are real brothers, whereas appellant no. 3 is wife of appellant no. 1. Prosecution witness Chatrabhuj Haribhai is resident of Tori village and is having 30 vighas of land as well as business of grocery. He had two sons and one daughter and wife named Champa. His daughter was married on 11/2/1989 to appellant no. 2, resident of village Sanala. Appellant no. 2 has two brothers, namely Devashibhai and Pragjibhai - appellant no. 1 herein. Both are elder to him. On the day of marriage, the marriage party had come from Sanala and after the marriage ceremony was over in the evening of the same day it returned to village Sanala. At the time of departure of the marriage party alongwith bride Rama i.e. daughter of Chatrabhuj, several gold ornaments weighting about 55 grams were given to the bride and bridegroom by the parents of the bride. As per the custom of their community after 5 days of the marriage, several relatives of Chatrabhuj went to village Sanala to bring back Rama. They all returned at about 5.00 O'clock in the evening. Rama returned home and her parents found that she was not happy. She was crying. On inquiry she informed the parents that her brother-in-law and sister-in-law i.e. appellants nos. 1 and 3 were harassing her and were giving taunts that she had brought less dowry. She also stated that both of them had taken off the ornaments which she was wearing after the marriage. She further stated that these two persons had also asked her not to return and not to show her face again. The parents, therefore, inquired from the relatives who had gone to Sanala to fetch Rama and they also told parents that while Rama was coming back, she was crying and she told the relatives that her ornaments

were taken off from her person and that she was asked not to return to Sanala and not to show her face again. When the father of Rama saw his daughter, he did not find the ornaments on her body. Rama was, however, persuaded that she should not mind all these things and that all will become normal in due course of time. At night Rama did not even have her meal. Next day in the morning at about 7.00 O'clock when Rama prepared breakfast for the members of the family, Chatrabhuj and his sons ate breakfast but Rama did not. After eating breakfast both the sons of Chatrabhuj went to the shop and Chatrabhuj himself went to bazar to eat pan. His wife had already gone to the house of Kurajibhai to get milk and buttermilk. When Chatrabhuj returned home at about 7.30 O'clock he saw that the door of the house was open, but the door of kitchen was closed from inside. He, however, noticed that out of the window grill of the kitchen, smoke was coming out. He, therefore, called Rama, but she did not give any answer. Chatrabhuj therefore, gave a push to the door of the kitchen but it did not open. He, therefore, with all force gave another push, which resulted into opening of the door and found that Rama was lying on the floor. She was in burnt condition. Chatrabhuj, therefore, immediately rushed to her and asked her what she had done and in reply she told her father that because of the harassment caused to her by appellants nos. 1 and 3 she had taken this step. On further inquiry from the father, she clarified that it was appellant nos. 1 and 3 who caused the harassment. On looking to the condition of his daughter, Chatrabhuj got very nervous and he immediately called his neighbour Nagajibhai. Nagajibhai saw Rama and he immediately went to call the doctor. On the advice of doctor, Rama was taken to hospital at Vadia. In the afternoon at about 2.00 O'clock Chatrabhuj received a message that his daughter Rama had expired. He thereafter went to Tori and gave complaint regarding the incident to the Police Sub Inspector.

2.1. Before receiving the complaint on 17th February, 1989 at about 12.40 p.m. P.S.I. received papers from Babusing Madhusing P.S.O. Vadia Police Station. Babusing at the relevant time was discharging the duty as Head Constable in the said police station. On that day i.e. 17/2/1989 while he was in the police station, he had received an information from Vadia hospital by telephone informing him that one young girl belonging to Patel community of Tori, namely Ramaben Chatrabhuj had received burns and that she was admitted in the hospital for treatment. He, therefore, immediately noted the information in station diary and arranged to get her

dying declaration recorded. At about 12.40 p.m. P.S.O. Babusing handed over papers of A.D. No. 2 of 1989, which pertained to incident of Ramaben, for investigation. By then Rama had already expired and the information was registered as Accidental Death No. 2 of 1989. In the course of the investigation P.S.I. arranged to get the inquest panchnama, panchnama of the scene of offence, etc. drawn. Subsequently on receiving the complaint from Chatrabhuj, he forwarded it to the police station for registering offence. In the course of further investigation, he recorded statements of various persons acquainted with the facts of the case. He also arranged to get the post mortem examination done by the Medical Officer. On the next day i.e. on 18/2/1989 he arrested the present appellants against whom the said complaint was given. On completion of the investigation, he forwarded the chargesheet on 14/4/1989 to the Court of Ld. Judicial Magistrate First Class at Vadia for offences u/Ss. 304B, 498-A and 306 read with section 114 of the IPC. Since offences u/Ss. 304B and 306 are exclusively triable by the Court of Sessions, the Ld. Magistrate committed the case to the concerned Sessions Court at Amreli. At the trial, initially the charge came to be framed for offences u/Ss. 498-A, 304 B read with section 114 of the IPC on 26/11/1989. However, pursuant to the application given by the Ld. APP vide Exh.9 the charge was amended and offence u/S. 306 of the IPC was added on 3/1/1992.

2.2. The original as well as amended charges were explained to the appellants, but they had pleaded not guilty to the same and claimed to be tried.

3. At the trial the prosecution examined 11 witnesses in support of its case. Reliance was also placed by the prosecution on the documentary evidence such as the complaint, post mortem report, various panchnamas, etc. The prosecution vide pursis dated 1/1/1992 at Exh. 35 closed its evidence. Thereafter, the appellants in their further statements recorded u/S. 313 of the Cr.P.C. were put all the circumstances appearing against them in the evidence to enable them to render explanation, if any. They have not pleaded any specific case. According to them the complainant had filed a false case against them because appellant no. 2 was not liked by deceased Rama and also because relatives of Rama did not intend to return the ornaments given to her by the matrimonial side.

4. At the end of the trial, the Ld. trial Judge came to the conclusion that the prosecution had

established that on 17/2/1989 deceased Ramaben had committed suicide at the house of her father Chatrabhuj Haribhai. He also came to the conclusion that the prosecution has established beyond reasonable doubt that between 11th February, 1989 and 15th February, 1989 accused nos. 1, 2 and 3 i.e. the present appellants had caused physical as well as mental torture to deceased Rama and they had also taken away from her the ornaments and thereby they had created such circumstances whereby deceased Rama was compelled to commit suicide. According to him, accused nos. 1 to 3 i.e. the present appellants aided and abetted each other in causing harassment to deceased Rama which ultimately led her to committing suicide. The Ld. trial Judge, however, came to the conclusion that the prosecution had not been able to prove any demand of dowry and, therefore, he held that the appellants were not guilty of committing offence u/S. 304-B of the IPC. He, however, found them guilty of committing offence u/S. 498-A and 306 read with section 114 of the IPC and passed aforesaid sentences against them.

5. At the hearing of this appeal Mr. K.J. Shethna, Ld. counsel appearing for the appellants contended that the judgment and order of conviction and sentence passed by the Ld. trial Court are erroneous in as much as the prosecution had not been able to prove its case against the appellants beyond any reasonable doubt. He has further contended that there is no cogent and reliable evidence on record to show that any mental torture or physical cruelty was given to deceased Rama which ultimately compelled her to commit suicide. According to him, from the prosecution evidence itself it emerged that Rama was not at all happy with this marriage and it is quite possible that for that reason she may have taken this extreme step. He has further submitted that even if the case of the prosecution is taken to be true, the allegation with regard to harassment and mental torture is not of that type which may constitute an offence u/S. 306 of the IPC. Lastly he has submitted that this appeal deserves to be allowed and the appellants deserve to be acquitted of all the charges levelled against them.

5.1. Mr. K.C. Shah, Ld. APP appearing for the respondent - State has vehemently opposed this appeal and has supported the judgment of the trial Court. He has submitted that looking to the fact that within five days of her marriage Rama was compelled to end her life itself shows that what amount of harassment was caused to her. He has submitted that by taking away the ornaments from the person of a newly wedded bride itself is very grave

humiliation and insult of the highest degree which no lady having self respect would ever tolerate. According to Mr. Shah, this act of harassment and cruelty alone is sufficient to constitute offence u/S. 306 of the IPC. He has submitted that this appeal has no merit and it deserves to be dismissed.

6. Both the learned counsels have taken me through the entire record of the case including the oral evidence to support their rival contentions. I have also scrutinised the evidence on record with a view to reappraise it.

7. With a view to prove that Rama had not died a natural death but she had committed suicide, the prosecution has examined Dr. Vallabhbhai Naranbhai Kunadiya P.W. 6 Exh. 19, who at the relevant time i.e. on 17th February, 1989 was working as Medical Officer at Subsidiary Health Centre, Vadia. He stated that on that day Rama was brought to the hospital at about 10.30 a.m. On examination it was found that she had received burns all over her body except soles of the feet and private parts. She was brought to the hospital by Kurajibhai Haribhai and Vanmalibhai Gordhan in a tractor. On finding her condition critical, according to him, he wrote Yadi to the P.S.I. for arranging to record her dying declaration. Pursuant to the P.S.I.'s direction the Taluka Magistrate arrived at the hospital for recording the dying declaration of Ramaben. He has further stated that before going to the patient the Taluka Magistrate contacted him to inquire about the mental as well as physical state of the patient and he gave in writing to him that the patient was conscious and was in a position to give answers to the questions that may be put to her. He has further stated that as soon as the Taluka Magistrate commenced questioning the patient, he went outside the ward and only returned to the patient after he was called by the Taluka Magistrate on completion of the recording of the dying declaration. When he went to her and he again checked the patient and found that she was conscious and he wrote an endorsement to that effect on the dying declaration. According to this witness, the patient expired at about 12.30 noon. Thereafter, Police Inspector drew the inquest panchnama and handed over body to the witness for carrying out the post mortem examination. He has further stated that on receiving the Yadi he and Superintendent of the hospital one Mr. Prajapati performed the post mortem examination of deceased Ramaben, which commenced at 2.45 p.m. and completed at 3.45 p.m. The post mortem report was also prepared and in column no. 17 external injuries found on

the body of the deceased were recorded. According to the witness, the deceased had suffered 1st and 2nd degree burns all over the body except the soles of her feet and private parts. In their opinion, the death was caused due to neurogenic pain shock as a result of 90% 1st and 2nd degree burns suffered by the deceased. In the cross-examination by the defence no material adverse to the finding arrived at by the Medical Officers performing the post mortem was brought out. Over and above this, the prosecution has also placed reliance on the inquest panchnama at Exh. 11.

7.1. In light of the medical evidence, it clearly appears that deceased Rama had died of 90% 1st and 2nd degree burns suffered by her. I am, therefore, in agreement with the finding given by the trial Court to the effect that the deceased had not died a natural death.

8. With a view to prove the allegation that deceased had committed suicide on account of physical torture and mental harassment caused to her by the appellants, it has examined father of the deceased - Chatrabhuj Haribhai and others.

8.1. Chatrabhuj Haribhai P.W. 1 Exh. 13 has stated in his evidence that he resided at village Tori and had 30 Vighas of land for agriculture and he also dealt in the business of grocery. According to him he had two sons and one daughter and wife named Champa. His daughter Rama was married to appellant no. 2 on 11th February, 1989. At the time of her marriage, they had given gold ornaments to her and her husband i.e. appellant no. 2 weighing about 55 grams. From the matrimonial side his daughter had received a Rajwadi necklace, two gold bangles, a gold chain and earrings. On the same day in the evening the marriage party had returned to Sanala alongwith bride Rama. Five days thereafter, as a custom prevailing in their community known as 'Dhag', several members of his family went to village Sanala in the early morning at about 5 to 6 a.m. in a tractor to bring back Rama. They all, including Rama returned to village Tori at about 5.00 O'clock in the evening. He has further stated that when Rama returned home, he found that she was crying and she looked very sad. He, therefore, asked the members of Dhag and his son the reason for her sadness. His daughter informed him that she was given tremendous amount of harassment by appellants nos. 1 and 3 saying that she had brought less dowry and they had also taken off the ornaments from her person. She further stated

that these appellants also told her that she should not show her face again as they did not want her. The members of the Dhag also told the witness at the time of returning from Sanala, they found Rama crying and on inquiry she informed them that her ornaments were taken away and she was told she should not come back as she was not wanted by her in-laws. The witness has further stated that when he saw his daughter, he did not find ornaments on her person. At night Rama did not have her meal, despite her being consoled by her father. Next morning at about 7.00 O'clock she prepared breakfast for the members of the family, but she herself did not eat it. Her brothers and father ate the breakfast and her brothers went to the shop, whereas the witness went to eat Pan in bazar. The wife of witness had already gone to the place of Kurajibhai for bringing milk and buttermilk. The witness has further stated that when he returned home at about 7.30 a.m. he saw the door of the house open and he found the door of the kitchen closed from inside. He also noticed smoke coming out of the grill of the window of kitchen. He, therefore, gave a shout asking his daughter Rama to open the door, but he did not get any response. He, therefore, pushed the door but it did not open. He again gave a push with force and he could open the door. Inside the kitchen he found Rama lying on the floor in burnt condition. He, therefore, asked her what she had done and in answer she informed her father that because of the harassment caused to her by the brother-in-law and sister-in-law and the husband (the appellants) she had taken this step. On further inquiry regarding the identity of the brother-in-law and sister-in-law, she clarified that it was appellant nos. 1 and 3 who had caused harassment to her. The witness also identified all the appellants as well as original accused no. 4 in the Court. He has further stated that on seeing the condition of his daughter, he got nervous and immediately rushed out and called neighbour Nagajibhai. Nagajibhai arrived there and saw the condition of Rama and he immediately went to call doctor. He summoned Dr. Ghandhyambhai Virani, who advised them to remove Rama to Vadia hospital. According to this witness, his daughter could not tolerate the harassment caused to her on account of less dowry. He has further stated that his daughter was removed to hospital by one Vanmalibhai, the brother of witness, Kurajibhai and Dr. Virani. According to him, he received news about the demise of Rama at about 2.00 p.m. and thereafter he went to Tori and gave complaint to the Police Sub Inspector. In the cross-examination of this witness, he has admitted that nobody has killed his daughter Rama. He has further stated that Rama had studied upto 7th standard and she

was quite bright. He has further stated that they had given adequate dowry to Rama considering their financial position and status in the society. He has further stated that Rama was given two gold bangles, a Rajwadi necklace and a golden chain as well as gold earrings by the members of matrimonial side. He has admitted in the cross-examination that in the complaint he had not stated that according to Rama, her in-laws had told her that she was not wanted by them. However, he has denied that he had not stated in the complaint that her elder brother-in-law and sister-in-law had told her that she should not show her face again. He has also denied that he had not stated in the complaint that on inquiry, the members of Dhag party had informed him that at the time of returning to village Tori at Sanala the members of the Dhag party had found Rama crying and they, therefore, asked her the reason for which she was crying and in response, she informed them that her in-laws had taken away her ornaments and they had asked her not to come again. He has further stated that after having pan when he returned home about half an hour to three quarters of an hour had already passed. He has further stated that he did not remember whether in the complaint he had stated that at home he had not seen any body and he had called for Rama, but she had not given any answer. He has also stated that he did not remember whether he had stated in the complaint that on inquiry as to why she had done this thing, Rama told him that because of the harassment caused to her by her brother-in-law and sister-in-law she had taken this step. He has also stated that it was not true that in the complaint he had not stated that on further inquiry regarding the brother-in-law and sister-in-law Rama had given the names of appellants nos. 1 and 3. He has, however, admitted that he had not stated in the complaint that Rama had committed suicide because she could not tolerate the harassment on account of bringing less dowry. He has also admitted that in the complaint he had not stated that the members of Dhag party had told him that when they went to Sanala, the in-laws of Rama had not shown any love and affection to them. He has, however, denied the suggestion that nobody had taken away the ornaments of her daughter. The witness has further stated that his daughter was very beautiful. However, he denied that because she was pretty looking and her husband i.e. appellant no. 2 was of dark complexion, she did not like him and she always used to complain to him that why she was married to such a person and that she did not want to stay with him. He also denied the suggestion that Rama told her parents that what type of mother and father they were as they had spoiled her life. He also denied the

suggestion of the defence that she had committed suicide on account of the fact that they forced her to continue with the marriage and stay with her husband.

8.2. Vanmalibhai Gordhanbhai, P.W. 4 Exh. 17 has stated in his examination-in-chief that he was one of the members of Dhag party which had gone to fetch Rama. They were about 15 to 20 members and they had gone in a tractor. Father of Rama had not accompanied them. He has further stated that they had not received warm welcome and they were not properly treated by the in-laws of Rama. Her husband was not present. When they were about to return Rama was crying and told them that her ornaments were taken away by her in-laws. In the cross-examination, he has admitted that he is having problem of short of hearing and he did not do any business or other activity except agriculture. He has admitted that he had not stated before the police that when they went to the house of Rama's in-laws, they did not receive any warm welcome and their behaviour was not cordial. He has also stated that they had lunch at the place of in-laws of Rama and in lunch they were served with Churma Laddu, bhajis (), vegetable and dal and rice. All the members of Dhag party had this lunch at about 12.00 noon and also drank tea twice.

8.3. Champaben Mohanbhai P.W. 5, Exh. 18 is the mother of the deceased. She has deposed before the Court on the same line of evidence given by her husband. In the cross-examination she has denied that it was not true that she had not stated in her police statement that Rama, in response to her query, had informed her that it was her brother-in-law and sister-in-law who had taken away her ornaments. She has further denied that in the police statement she had not stated that Rama had clarified that her brother-in-law and sister-in-law i.e. the present appellants nos. 1 and 3. She has denied the suggestion that she had taken off the ornaments in the hospital in accordance with the advice given to her by doctor. She has admitted that Rama was educated and was very good looking. In a specific question to her to the effect that her son-in-law i.e. appellant no. 2 was dark and was having marks of smallpox. She has answered that whatever he looked like, he was like a gold for them ().

8.4. Ratandan Gulabdan Gadhvi P.W.7 Exh.23 is the Executive Magistrate, who had at the relevant time worked at Vadia and he had gone to the hospital on receiving Yadi from the police to record dying declaration. He has stated that on making inquiry from the Medical Officer,

he was satisfied that the patient was conscious and was in a position to answer the questions. In the cross-examination this witness has stated that Rama had told him that her husband was not at fault. He has also stated that in the dying declaration word 'harassment' - () has not been stated by Rama. He has produced the dying declaration on record at Exh. 25.

8.5. In the statement before the Executive Magistrate in answer to question no. 6, it is stated by Rama that there was no fault of her husband. In reply to question no. 9 she has explained why she felt bad. She has stated that she was unhappy because her ornaments were taken away by her brother-in-law and sister-in-law.

8.6. Similarly, the prosecution has placed reliance on the evidence of Haribhai Bhagwanbhai P.W.8 Exh.26. His evidence is also on the same line as that of the parents of deceased. Nothing much of any importance is spoken by this witness in his evidence.

8.7. Shantaben Bhavanbhai P.W.9 Exh. 27 has stated in his evidence that she knew the family of Rama's father. She has repeated the same story in her examination-in-chief. In the cross-examination, this witness has stated that it was true that whatever she stated before the trial Court she had not spoken about it to any one else before. She has, however, denied the suggestion of the defence that she has not stated in the police statement that Rama had not narrated entire story to her while she was crying. The other witnesses examined by the prosecution are panchas as well as police officials, whose evidence is not required to be stated in detail herein.

9. Considering the evidence of the witnesses related to Rama, it clearly appears that she had stayed with her husband hardly for five days after her marriage and on the 5th day she was brought back to village Tori in accordance with the custom prevailing in their community. It may also be noted here that according to her, her brothers-in-law, namely appellant no. 1 and original accused no. 4 caused her harassment and mental torture and appellants nos. 1 and 3 had even taken off her ornaments. However, considering the evidence it becomes very doubtful whether in such a short time the brother-in-law and sister-in-law would venture to take away her ornaments and that they would ask her not to return to the matrimonial home. In fact most of the ornaments worn by her, were given to her by her matrimonial relatives. It also appears from the evidence

of father as well as mother of the deceased that so far Rama is concerned, they had given to her only a golden ornament to be worn on hand. In view thereof, there was no occasion for appellants nos. 1 and 3 to compel her to give back the ornaments. Considering the ingredients of section 306 of the IPC, whether alleged act of appellants nos. 1 and 3, even if taken it to be true, would be sufficient to constitute offence u/S. 306, is a matter of doubt. Even if the story regarding taking the ornaments back from her is found to be true, one cannot say what could be the intention of the appellants nos. 1 and 3 at that time. A possibility cannot be ruled out that such action was taken by them with a view to see that the ornaments are kept at safe place. There is nothing on record to show that appellants nos. 1 and 3 had taken away these ornaments with a view to deprive her of the same. So far the physical harassment is concerned, there is no evidence worth the name on record which could lend support to the prosecution case. No person from the neighbourhood of the appellants is examined to prove this aspect. It may further be noted here that with regard to the allegation to the effect that the Dhag party members were not given warm welcome, there is prosecution evidence on record to show that they were served with a sumptuous lunch, which included Churma Laddu, bhajis (), vegetable, dal and rice. They were also served tea twice. If at all the attitude of the in-laws of Rama was cold towards the members of Dhag party, they would not have treated them so well.

9.1. In the dying declaration, so far appellant no. 2 is concerned, deceased Rama has merely stated that he was not at fault. Taking the overall view of prosecution evidence in so far it relates to the allegation regarding cruelty and harassment, I find that the prosecution has not been able to prove that appellants had caused any harassment with an intention to drive deceased Rama to such a situation that she had no alternative but to commit suicide or that it was of a such nature that Rama was constrained to end her life. It is also there in the prosecution evidence that Rama was very good looking girl. At the same time she was educated and brilliant also. As against that, appellant no. 2 i.e. her husband was of dark complexion having marks of small pox all over his body including face. It is quite possible that appellant no. 2 may not be as per the expectation of Rama and on that count she might have become very much frustrated and disgusted, which may have ultimately led her to take such extreme step. If that be so, the appellants cannot be held responsible, by any stretch of imagination, for the death of Rama. I do not accept the

contention raised by Mr. Shah that taking away the ornaments of a newly married girl from her person amounts to grave humiliation and insult which no lady having self respect would tolerate. It is quite possible that appellants nos. 1 and 3 being elder to appellant no. 2 and Rama, might have asked her to give the ornaments so that they can be kept into safe custody. As already discussed above, there is nothing on record to show that appellants nos. 1 and 3 had to swindle these ornaments and deprive Rama of them permanently. So far the allegation to the effect that Rama informed her father and others that appellants nos. 1 and 3 asked her not to come back and not to show her face again as she was not wanted by them, it appears to be an after thought, as from the evidence of these witnesses it becomes very clear that they were telling these facts for the first time at the trial and nothing of the sort has been stated by them in the statements recorded by the police. It is, therefore, very hazardous to accept the prosecution story that appellants nos. 1 and 3 had given ill-treatment to the deceased.

9.2. Looking to the totality of these circumstances emerging from the evidence of aforesaid witnesses, it cannot be said that the prosecution has conclusively proved the charges levelled against the appellants. In other words, the prosecution cannot be said to have proved the case against the appellants beyond any reasonable doubt. As a natural consequence thereof, the benefit of such finding should go to the appellants. The judgment and order of conviction and sentence passed by the trial Court, therefore, are clearly erroneous and they are required to be quashed and set aside.

10. During the pendency of this appeal, appellant no. 3 - Nirmalaben has expired on 6/7/1996 and a communication dated 21/1/2002 addressed to the Ld. APP by the Superintendent of Police, Amreli together with the death certificate is produced here in support of this fact. The appeal of appellant no. 3 therefore stands abated.

11. This appeal is, therefore, allowed. Since the appellants are on bail, the bail bonds executed by the appellants shall stand cancelled. The fine, if paid, be refunded to the appellants.

Muddamal to be disposed of in terms of the direction given in the impugned judgment by the Ld. trial Judge.

[AKSHAY H. MEHTA, J.]

* Pansala.